

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF NEW YORK  
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5 - - - - - X  
6 UNITED STATES OF AMERICA ) 10cr6038  
7 vs. )  
8 DAVID RINERE, ) Rochester, New York  
9 Defendant. ) November 21, 2011  
10 11:07 a.m.  
11 - - - - - X

12 **SENTENCE**

13  
14 TRANSCRIPT OF PROCEEDINGS  
15 BEFORE THE HONORABLE CHARLES J. SIRAGUSA  
16 UNITED STATES DISTRICT JUDGE  
17

18  
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20 United States Attorney  
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P R O C E E D I N G S

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THE COURT: For the record, this is the matter of the United States versus David Rinere. You are David Rinere?

THE DEFENDANT: Yes, sir.

THE COURT: And you're appearing with your attorney, Mr. Okay; is that correct?

THE DEFENDANT: Yes, sir.

THE COURT: The Court notes the presence of Ms. Miller on behalf of the government; and Ms. Whitcomb is pinch hitting on behalf of Mr. Spogen for probation. As you know, this matter is on for sentencing and in that regard I have received and reviewed the following: The presentence investigation report prepared by Mr. Spogen as revised dated October 13th, 2011; the government's statement with respect to sentencing factors dated November 15th, 2011; the government's letter dated October 16th, 2011 regarding the victim's mother's request to be heard during the sentencing hearing; an undated letter from the victim's mother; an undated letter from the victim's grandmother, Ms. Bigato; an undated letter from the victim herself; I received the defendant's statement with

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2 respect to sentencing factors dated November 17th, 2011; I've  
3 also received the defendant's revised statement with regard to  
4 sentencing factors dated today's date, and the defendant's  
5 motion for an extension of time to file the documents that were  
6 submitted today. And I've also received a sentencing  
7 memorandum from the defendant dated November 21st, 2011.  
8 Before we proceed, I do want to note that I'll grant the  
9 application for the late filing. However, in the amended  
10 filing which I've now accepted, I'm reading under No. 2 and  
11 2(a) it says, relative to paragraph 37 of the presentence  
12 report, the defendant denies that he was ever sexually involved  
13 with the minor victim. Relative to paragraph 61 of the  
14 presentence report, the defendant denies vaginal, anal, oral  
15 and digital intercourse with the minor victim. I do note that  
16 in the plea agreement itself in paragraph 10(b) it reads the  
17 government and the defendant agree that the following specific  
18 offense characteristics do apply. (B), the two-level increase  
19 pursuant to Guideline Section 2G2.1(b)(2)(A) an offense  
20 involved the commission of a criminal sexual act -- excuse me  
21 -- of a sexual act. The Guidelines in defining sexual act  
22 refuse 18 U.S.C. section 2462. The term "sexual act" means:  
23 Contact between the penis and the vulva or the penis and the  
24 anus. And for the purpose of this subparagraph contracting  
25 involving the penis occurs upon penetration however slight.

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2 (B) contact between the mouth and the penis, the mouth and the  
3 vulva, and the mouth and the anus (C) the penetration, however  
4 slight, of the anal or genital opening of another by a hand,  
5 finger or by any object with intent to abuse, humiliate,  
6 harass, degrade or arouse or gratify the sexual desire of any  
7 other person. (D) the intentional touching, not through the  
8 clothing, of the genitalia of another person who has not  
9 obtained the year of sixteen years with an intent to abuse,  
10 humiliate, harass, degrade or arouse the sexual desire of any  
11 person.

12 I would also note according to what the court  
13 could determine based upon the presentence report that the  
14 defendant was indicted in Monroe County in 2010 on indictment  
15 No. 369 with multiple counts of sexual act in the second --  
16 multiple counts of criminal sexual act, rape in the second,  
17 endangering the welfare of a minor, and sex abuse in the third.  
18 Apparently, a number of those charges, or at least a couple of  
19 those charges, were dismissed, but the remaining charges are  
20 still pending in indictment No. 369. Additionally, it appears  
21 that on January 24th of 2011 the defendant was indicted again  
22 in Monroe County for rape in the second degree, three counts  
23 sexual abuse in the third. For some unknown reason to me there  
24 has been no arraignment on the new indictment. The first  
25 indictment, some of which the charges were dismissed, he was

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2 arraigned, and, apparently, that is on tomorrow, the Court  
3 assumes. And there is an indication that the victim is the  
4 same as the victim in this case.

5 So we're confronted, Mr. Okay, with your position  
6 that your client did not commit any sexual acts in the face of,  
7 I'm assuming, an indictment returned in Monroe County court  
8 which found probable cause that he did exactly that, and in the  
9 face of a plea agreement in which he said that he, again, I'm  
10 quoting, that paragraph 10(b) of the plea agreement: The  
11 two-level increase pursuant to Guideline Section  
12 2G1.1(b) (2) (A), an offense involved the commission of a sexual  
13 act. Now, obviously there is a factual dispute, despite what's  
14 indicated in the plea agreement, to be fair to your client, I  
15 want to the factual dispute resolved. The Court would have to  
16 determine by a preponderance of evidence that a sexual act did  
17 occur. I reviewed the transcript, which I have. Because the  
18 charge did not involve the actual commission of the sexual act,  
19 the factual portion of the plea agreement which the Court uses  
20 as a base line in taking a plea did not specifically include  
21 allegations that he engaged in a sexual act. The Court did not  
22 specifically inquire into those.

23 MS. MILLER: Your Honor, if I may, the  
24 government's reading of the transcript is that sexual contact  
25 was raised by the Court twice.

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2 THE COURT: Where? I have the transcript.

3 MS. MILLER: On pages 32 at lines 22 through 25.

4 THE COURT: Hang on a second. 32, lines 22  
5 through 35.

6 MS. MILLER: Twenty five, your Honor.

7 THE COURT: Let me read those for the record.  
8 Start with 19 on page 32. The Court: Mr. Rinere, you had to  
9 know doing this was wrong, is that a fair statement the  
10 defendant: I'm sorry I didn't hear you. The Court: You had  
11 to know that being involved in this relationship, which  
12 apparently was some sexual relationship with the girl, was  
13 wrong, fair statement.

14 Yes, sir.

15 The Court --

16 MS. MILLER: And, your Honor, continuing then on  
17 page 33 beginning at line 15.

18 THE COURT: Let me pick it up on 15. The Court:  
19 I understand, but the fact remains you knew the photographs  
20 were photographs of a 13 year old and that they were sexually  
21 explicit and what you're telling me that you did engage in  
22 sexual acts with her.

23 You're right.

24 Is that a fair statement.

25 Yes, sir.

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2 Mr. Okay, is it your client's position that he did  
3 not engage in sexual acts with the victim.

4 THE DEFENDANT: Yes, it is.

5 MR. OKAY: Your Honor, if I could just add  
6 something. If we don't object to the -- what's in the PSR,  
7 it's deemed admitted as fact. And there is an outstanding  
8 prosecution in state court now where that could be used against  
9 him. And so that puts us in a difficult position here.

10 THE COURT: You're in a Hobson choice. But here  
11 is what I would do. I'm going to adjourn sentencing, you can  
12 submit to me -- listen. You can submit to me an affidavit from  
13 the victim and I will order a hearing. I can -- at a hearing,  
14 I can determine what is reliable. In other words, hearsay is  
15 admissible. And I need to base any decision on what I consider  
16 reliable. Certainly something under oath in an affidavit form  
17 the Court can consider reliable evidence. Mr. Okay, I'll give  
18 your client a chance to offer, if he wants to offer testimony,  
19 he can offer testimony. I'm pointing out 3E1.1, "Acceptance of  
20 Responsibility" application note No. 1: In determining,  
21 whether a defendant qualifies under subsection (a) appropriate  
22 considerations include but are not limited to the following:  
23 Truthfully admitting the conduct comprising the offense of  
24 conviction; and truthfully admitting or not falsely denying any  
25 additional relevant conduct for which the defendant is

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2 accountable under 1B1.3, "Relevant Conduct." Note that a  
3 defendant is not required to volunteer or affirmatively admit  
4 relevant conduct beyond the offense of conviction in order to  
5 obtain a reduction under subsection (a). A defendant may  
6 remain silent in respect to relevant conduct beyond the offense  
7 of conviction without affecting his ability to obtain a  
8 reduction under this section. However, a defendant who falsely  
9 denies or frivolously contests relevant conduct that a Court  
10 determines to be true has acted in a matter inconsistent with  
11 acceptance of responsibility. So, I point that out as well.  
12 That if the defendant -- if I determine the defendant is  
13 affirmatively falsely denying this, he could lose two points.  
14 I'm not sure of the last one but he could lose two points for  
15 acceptance. And, also, there could be an issue of perjury  
16 during the course of a sentencing hearing, which could result  
17 in a two-point increase. If that -- I'm not saying that were  
18 to happen. But if that were to occur, if that were to occur,  
19 the defendant's offense level would be increased by -- could  
20 potentially be increased by a total of three, which would take  
21 him to -- from what, potentially -- which would take him from a  
22 36 to a 39; is that correct? I'm not saying that would occur.  
23 Again, I realize there is the issue of distribution as well.  
24 But with a 39, I mean, the recommended range under the advisory  
25 Guidelines would then become the statutory maximum of 240



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2 months. I'm again trying to be fair to the defendant. I mean,  
3 I didn't specifically get into the nature of the sexual act  
4 because I didn't think it was relevant at the time. However,  
5 if he is contesting that there was some confusion, but the fact  
6 remains that these photographs were photographs of a  
7 13-year-girl and were sexually explicit. And what you're  
8 telling me you did engage in sexual acts with her, is that a  
9 fair statement. Now, I didn't define sexual acts, but  
10 certainly if your client wants to submit an affidavit or  
11 testify.

12 MR. OKAY: Your Honor, my client has just  
13 indicated to me that he is willing with withdraw the revised  
14 statement of parties with respect to sentencing factors and we  
15 would default back to the one we filed on November 17th, which  
16 doesn't have any of those objections in it.

17 THE COURT: Mr. Rinere, let me ask you this.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Again, my job is to be fair in this  
20 case. And if there was any confusion -- and I'm telling you  
21 that I didn't specifically, as I did, today, define what a  
22 sexual act is. Presumably somebody could think a sexual act is  
23 taking a picture. And that is not the way it's defined under  
24 law. So, to give you the benefit of the doubt, what I'm  
25 indicating is I would require Ms. Miller to provide an

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2 affidavit from the victim detailing, if it was the truth, her  
3 account of any sexual intercourse, anal intercourse, digital  
4 penetration that you may have had with her, and I will give you  
5 a chance to contest that and you'd have to do that either by an  
6 affidavit or and then I would make a determination. Because I  
7 want you to understand this, and I'm sure Mr. Okay has  
8 discussed it with you, you've been convicted by a plea in this  
9 court of one count of receipt of child pornography.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: There are different cases, guidance  
12 that the Court above me has offered in these kind of  
13 situations. I'm sure Mr. Okay has talked to you about. One  
14 case, the *Dorvee* case, might suggest that some of the increases  
15 that are applied are applied in every case and that a court has  
16 to carefully scrutinize their application to make sure that an  
17 unjust, that is, an unreasonable sentence is not meted out.  
18 Another case a subsequent case called the *Aumais* case suggests  
19 that *Dorvee* wasn't this blanket statement that you can never  
20 give the Guidelines in a child pornography case but rather says  
21 that each case must be looked to individually. But I'm telling  
22 you this a big factor as made clear by the *Dorvee* case is  
23 whether or not an individual is a predator, poses a threat to  
24 children. Obviously if it's not refuted, and I'm looking at  
25 the presentence report, paragraph 19 says that, "Rinere first

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2 had sexual intercourse with the victim on October 22nd, 2008.

3 Rinere was 41 years old and the minor was 13 years old.

4 MS. MILLER: Paragraph 61, your Honor.

5 THE COURT: The minor reported on May 18th, 2008  
6 she was introduced to a long-time family friend of her mother's  
7 named David Rinere, a white guy in his forties. She advised  
8 that in late June or early July of 2008, Rinere gave her an  
9 AT&T cellular telephone and the two eventually started texting  
10 each other. She reported their texting conversations gradually  
11 became more boyfriend/girlfriend-type in nature. And on  
12 September 27th, 2008, they decided to be boyfriend and  
13 girlfriend. The minor victim was 13 years old and Rinere was  
14 41. The victim reported that around October 22nd, 2008 the two  
15 had intercourse together. She reported that Rinere put his  
16 mouth on her vagina and put his fingers in her vagina and had  
17 intercourse. She stated that was the first time she ever had  
18 sexual intercourse and they had sex about seven more times that  
19 day. The victim reported that over the course of their  
20 relationship, approximately five months, they had sexual  
21 intercourse approximately 50 times, they also engaged in oral  
22 sex and anal sex, and that he put his penis into the victim's  
23 mouth six or ten times. The victim reported that Rinere did  
24 wear a condom in the beginning of their relationship but toward  
25 the end stopped wearing them. She advised the last time they

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2 had sex was on April 4th, 2009 when their relationship was  
3 discovered and her mother called the police. It was during  
4 this period when Rinere instructed the victim to take naked  
5 pictures of herself with the cellular telephone he gave her and  
6 to send them to his cellular telephone.

7 I'm just pointing out, so I want you to  
8 understand, if you withdraw your objections that, I'm going to  
9 say that there being no objection, other than the one stated in  
10 your first statement, which I'll review, there being no other  
11 objections, the Court accept the statements contained in the  
12 presentence investigation report as its findings of fact. That  
13 means I will find that you did engage in that conduct. So I  
14 don't want there to be any mistake about that or any confusion.  
15 You have a right to contest the statements contained in the  
16 presentence investigation report, if you want. I'm telling you  
17 as clearly as I can that if I find that you have engaged in  
18 sexual intercourse, anal intercourse, oral intercourse with a  
19 girl 13 and 14, that it may indeed affect the sentence you  
20 receive. Because that is not the typical possession of child  
21 pornography -- or, excuse me -- receipt of child pornography  
22 case that I get. The typical case, frankly, Mr. Rinere, is  
23 situations where law enforcement monitors computer activity  
24 they go into to shared Internet services such as KaZaa or  
25 Limewire or Frostwire and they engage in communications with

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2 someone who transmits to them child pornography and receives it  
3 from them. That is your typical case. I'm telling you that.  
4 If you want a chance to confer with Mr. Okay, I'll give you  
5 that chance or we can proceed to sentencing.

6 THE DEFENDANT: I'd rather proceed to sentencing,  
7 sir.

8 THE COURT: Are you sure? Do you understand that  
9 if you want to, I will give you a chance to confer with Mr.  
10 Okay and I would be willing to adjourn sentencing if you want  
11 to. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Is it your choice to proceed?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. For purposes of the  
16 record, Ms. Miller, has the government received the presentence  
17 investigation report?

18 MS. MILLER: Yes, your Honor.

19 THE COURT: And, Mr. Okay, have you received the  
20 revised presentence investigation report?

21 MR. OKAY: Yes, your Honor.

22 THE COURT: Have you gone over it with Mr. Rinere?

23 MR. OKAY: Yes, your Honor.

24 THE COURT: And, Mr. Okay, you are, again, so the  
25 record is clear, withdrawing the amended statement with respect

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2 to sentencing factors which specifically affirmatively objects  
3 to the references in the presentence report that the defendant  
4 had sexual intercourse, anal intercourse, oral intercourse with  
5 the victim; is that correct?

6 MR. OKAY: Yes. We are withdrawing the revised  
7 statement that was filed on November 21st.

8 THE COURT: Do you agree with that, Mr. Rinere?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Ms. Miller, does the government move  
11 sentence?

12 MS. MILLER: We do, your Honor.

13 THE COURT: I do note, Mr. Okay -- bear with me a  
14 second. Ms. Miller, do you have a copy?

15 MS. MILLER: The letter request?

16 THE COURT: Yes.

17 MR. OKAY: I have a copy.

18 THE COURT: I do have this request from the  
19 government it reads: Dear Judge Siragusa. The Defendant David  
20 Rinere is scheduled to appear before the Court on Monday  
21 November 21st, 2011 at 10 a.m. for sentencing. Title 18 of the  
22 U.S.C. Section 3371(a)(4) provides that the victim of a crime  
23 has the right to be reasonably heard at any public proceeding  
24 in the district court involving release plea, sentencing or  
25 parole proceedings. Title 18 of the U.S.C. Section 3771(e)

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2 defines the term "crime victim" as the person directly and  
3 approximately harmed as a result of the commission of a federal  
4 offense. It also provides that, quote, "in the case where the  
5 crime victim is under 18 years of age, incompetent,  
6 incapacitated or deceased, the legal guardians or  
7 representatives of the victim's estate, family members of the  
8 crime victim may assume the crime victim's rights. Serena  
9 Richardson is the mother of the victim in this case and will be  
10 attending the hearing and has expressed her wish to be heard  
11 before the Court sentences the defendant or at any time the  
12 Court deems reasonable. So, pursuant to this request and  
13 pursuant -- could you hand that back to Mr. Okay. And pursuant  
14 to the applicable law, the Court will give Ms. Richardson an  
15 opportunity to address the Court on behalf of her daughter  
16 before the Court passes sentence.

17 So it's clear, what would happen, Ms. Miller, you  
18 can make whatever statement you want, and Ms. Richardson can  
19 make a statement, and, Mr. Okay, you can comment on anything  
20 being said, and, lastly, Mr. Rinere, you will have the  
21 opportunity to address the Court before the Court passes  
22 sentence. So, Ms. Miller, again, does the government move  
23 sentence.

24 MS. MILLER: We do, your Honor.

25 THE COURT: Is there anything you would like to

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2 say?

3 MS. MILLER: Briefly the government relies  
4 principally on its sentencing statement previously filed with  
5 the Court. I note, again, as the Court has at the time this  
6 conduct occurred just about three years ago now the victim was  
7 then 13, she is now 16. And to my understanding in speaking  
8 with both her and her family that the adjustment back to being  
9 a normal teenager has been somewhat of a rough road for her.  
10 She is receiving counseling and it is her decision not to  
11 appear here today because, quite frankly, your Honor, she is  
12 trying to move on and thought this would be detrimental to her  
13 mental health to come back today. So that is why her mother is  
14 here to speak to the Court. I will note that we have  
15 previously submitted statements, as the Court recognized, from  
16 the victim and other family members. Before I turn over to  
17 Mrs. Richardson, I would just note, your Honor, that as the  
18 Court has previously noted this is a different case. This is  
19 not simply someone online looking at the images. Mr. Rinere  
20 groomed a 13-year-old girl, got to the point where she believed  
21 that they were in a boyfriend/girlfriend relationship, and even  
22 he himself admitted he stopped looking at her as a 13-year-old  
23 girl, which thereafter led to a significant sexual relationship  
24 and a relationship in which he induced and enticed her to take  
25 these photographs and even a video of herself masturbating and



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2 send them to him on his cell phone which he not only kept, but  
3 there is evidence that he moved on to a computer at the  
4 residence where he was staying. Your Honor, we have no  
5 indication to believe that those images have traveled  
6 thereafter. However, I know it's a concern for the victim to  
7 know that these images do exist and wonders whether or not they  
8 will come back in the future. So, the government respectfully  
9 requests a Guideline sentence of 188 to 235 months. We would  
10 additionally request that as part of the Court's sentence the  
11 Court impose a stay away order for the victim during his term  
12 of supervised release.

13 THE COURT: Okay. Ms. Miller, would you address,  
14 there was one area up for dispute and the Court will rule,  
15 before hearing from the victim's mother, the Court wants to  
16 rule on the objections. One major objection is with the  
17 distribution. I take it it's the government's -- so can you  
18 comment on the government's position on whether or not the  
19 presentence report is correct with the application of the  
20 increase for distribution?

21 MS. MILLER: Your Honor, the government does move  
22 and concur with the recommendation contained in the presentence  
23 investigation report that the enhancement for distribution  
24 pursuant to section 2G2.1(b)(3), again, involving distribution  
25 does apply in this case. Looking at the commentary associated

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2 with this section, there are few parameters based on it. I  
3 certainly think in this case we have a case of production and  
4 the active distribution related to the transfer of material  
5 involving the sexual exploitation of the minor. Your Honor, in  
6 this case the government would respectfully submit there are a  
7 number of cases of distribution. Having enticed the victim to  
8 create these images, the defendant thereafter sought to have  
9 the images transmitted to him. Accordingly, she sent them from  
10 her cell phone to his cellular phone. So, again, that is a  
11 transfer of material involving the sexual exploitation of a  
12 minor attended to the act of production. We might also argue  
13 that the facts that that image was thereafter signed from his  
14 cell phone to the computer of the owner whose home he was then  
15 staying is almost a second act of distribution moving it to a  
16 separate device. But I think that the primary distribution is  
17 having induced the victim to capture these images to then  
18 induce her to send them to him.

19 THE COURT: Mr. Okay, do you want to comment on  
20 that or do you want to rest on your papers?

21 MR. OKAY: I'll rest on the papers, but I would  
22 just note that as far as the distribution enhancement is  
23 concerned, the way that we see it or the way that I see it or  
24 the way that it looks to us is that this image was sent from  
25 one cell phone to a second cell phone and then allegedly from a

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2 cell phone to a computer. When it was sent to the computer, it  
3 was sent to a password protected account on the Jackie Madigan  
4 computer, the Dell Dimension L 500 C desktop that in Count 3 of  
5 the indictment says it was possessed by the defendant, that is  
6 the possession count in the indictment. And there was no  
7 transfer to a third party. There was no transfer for any  
8 pecuniary gain. They kept this between themselves. And our  
9 position is there was no distribution, not in the manner that  
10 is contemplated by the application note to that particular  
11 Guideline subdivision. Our position is that that enhancement  
12 should not apply.

13 THE COURT: Hang on a second. I'm reading from  
14 the definitional section 2G2.1, definitions under the  
15 "Commentaries. Distribution means any act, including  
16 possession with intent to distribute, production, transmission,  
17 advertisement and transportation related to transfer of  
18 material involving the sexual exploitation of a minor.  
19 Accordingly, distribution includes posting material involving  
20 the sexual exploitation of a minor on a website for public  
21 viewing. It does not include the mere solicitation of such  
22 material by a defendant." Ms. Miller, what is the mere  
23 solicitation of such defendant -- a mere solicitation of such  
24 material by a defendant mean?

25 MS. MILLER: Your Honor, the government would

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2 respectfully submit that is the second half of that refers to  
3 Internet transactions more of a third-party advisement type of  
4 distribution, which I don't think is happening here. The  
5 government's submission is that the words, "any act," are  
6 fairly clear as is the broad including, and, obviously, there  
7 is a host of factors that apply there, but there doesn't seem  
8 to be this requirement that a third party be involved.

9 THE COURT: So what you're indicating is the  
10 second phrase means if somebody said, look, I'd like some  
11 pictures in a website, that would be distribution. Okay. The  
12 Court -- first of all, there does not appear to be any factual  
13 dispute as to what occurred. Rather the Court must decide as a  
14 matter of law whether the undisputed conduct amounts to  
15 distribution. The Court finds it does. The Court finds as a  
16 matter of law that the conduct as detailed until paragraph 37  
17 is the amount to distribution as that term is defined in  
18 section 2G2.1(b). The Court is excluding in its determination  
19 the picture of his penis, which he transmitted to the minor.  
20 In making its determination, the Court is not considering that  
21 but rather is focusing on the fact of the distribution of  
22 material involving the minor. The Court, to the extent it's  
23 necessary, makes that finding as a matter of law beyond a  
24 preponderance. Of course, Mr. Okay, you can have an exception  
25 to the Court's ruling.

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2 Moving on on your objections. With respect to  
3 your now only statement with respect to sentencing factors,  
4 will direct that the report reflect that he has scars on his  
5 back. That is paragraph one on page two. We'll ask that to be  
6 noted. I've already dealt with the second objection. The  
7 third, paragraph 15 relative to paragraph 81 of the presentence  
8 report mental and emotional health. The defendant notes that  
9 he has been a mental health inpatient and dual diagnose  
10 treatment facility at least six or seven times since the age of  
11 15 for mental disorders, including anorexia and bulimia.  
12 Again, I'll ask that be reflected in the report that is what  
13 the defendant maintains that may be germane to sentencing. The  
14 defense notes that the list of agencies set forth in paragraph  
15 81 of the presentence report is not a complete list of the  
16 agencies that the defendant has interacted with in his life.  
17 The defendant notes further that the claim of the defendant  
18 that he has been diagnosed as a paranoid schizophrenia at least  
19 four to six times in his life I ask that again the report  
20 reflect that that is what the defendant is maintaining, it may  
21 be germane at sentencing. Four, relative to paragraph 83 of  
22 the presentence report, substance abuse, the defendant notes  
23 that he has participated in 18 drug rehabilitation programs and  
24 21 drug detoxification programs. Again, for what it's worth,  
25 I'll ask that be added to the presentence report, again the

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2 Defendant's claim. It goes onto say, the list of substances  
3 set forth in paragraph 83 is incomplete and should also include  
4 LSD and heroin. It includes -- I note that paragraph 83 does  
5 include LSD. Unless I'm missing it, it does not include  
6 heroin, so we can add heroin to the list. Finally, page 16,  
7 relative to paragraph 85 of the presentence report, the  
8 defendant notes that while he worked for Pinkerton Security in  
9 Butler, PA he managed 150 employees at 15 job sites. And when  
10 he worked at Burger King in Butler, PA he was the restaurant  
11 manager. Again, I'll ask that be included for whatever it's  
12 worth and the defendant is advised. So the Court now has ruled  
13 on all of the either objections or requests for additions to  
14 the presentence report.

15 MR. OKAY: Your Honor, if I may, this morning we  
16 filed an application for an extension of time and in our  
17 affidavit we mentioned the name of Serena.

18 THE COURT: We asked that that be sealed. We'll  
19 make sure -- that was submitted to me or online now?

20 MR. OKAY: No, it's online.

21 MS. MILLER: It is my understanding after I raised  
22 the issue to Mr. Okay, that he did speak to the clerk's office  
23 and they will seal it.

24 MR. OKAY: It hasn't been online.

25 THE COURT: Kathy, after we're done, can you make

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2 sure that that was done.

3 THE CLERK: Yes.

4 THE COURT: Thank you, Mr. Okay.

5 MS. MILLER: Your Honor, Ms. Richardson has  
6 returned to the room.

7 THE COURT: For the record, again, this is Ms.  
8 Richardson, the victim's mother, who is exercising her right to  
9 be able to address the Court prior to sentencing. So, Ms.  
10 Richardson, take your time and please go ahead.

11 VICTIM'S MOTHER: I would like to start this on  
12 how I know David. David has been part of my whole life. We  
13 were friends even before we were born due to our mothers being  
14 friends in high school. David has always been part of both of  
15 my children's lives. In fact, his youngest son was conceived  
16 after our first visit to David and his wife to introduce my  
17 friend to my daughter, the victim when she was just a baby.  
18 While holding her and playing with her, they decided they want  
19 another. As a close friend to David, I truly thought I could  
20 trust this man with everything, even in my children's lives.  
21 We had visited David and his wife occasionally throughout the  
22 years. David lived in PA at this time. The last time we had a  
23 chance to visit David, my daughter, the victim, was only 5.  
24 David and I had stayed in contact throughout the years via  
25 e-mails, telephone and the computer. But just never got the

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2 chance to get together due to our busy lives. During those  
3 years so many things had changed in both David and my lives.  
4 In May of 2008, my mother got the horrible call from David  
5 saying that her best friend, Tina, had passed, David's mom.  
6 During those services, which were held back here in Rochester  
7 where she was born and raised, this was the first time I had  
8 seen David in many years. This is also when David decided to  
9 move back to Rochester to be close to his family and also get  
10 reintroduced to my youngest daughter, the victim. Again, she  
11 was just 13 and my oldest was 18. With all this said, what  
12 David has done to my daughter is so unspeakable and we all have  
13 to live the rest of our lives. The fears and distrust he has  
14 caused in her life can never be corrected. My daughter would  
15 be doing something as simple as listening to the radio and  
16 break out and cry because it was a song that David listened to.  
17 For example, she just distrusts men now. She has lost her  
18 connection with her own father due to the lies and untrue  
19 statements that David has told her. David convinced my  
20 daughter her father didn't love her, didn't want her and, in  
21 fact, never wanted her. David used that manipulation to get  
22 into my daughter's thoughts and mind making her think her  
23 father disliked her and never wanted her and she was an  
24 embarrassment to him. Which, to this day, their relationship  
25 is still dealing with issues of trust. David manipulated and



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2 physically abused my daughter for over eight months. She has  
3 also felt very shameful and embarrassed. He did sexual things  
4 to my child that made her feel very uncomfortable and told her  
5 not to mention those actions to anyone because they just  
6 wouldn't understand. Which those scars and thoughts will never  
7 leave her. Let's all just remember she was just 13 and he was  
8 43. It has taken intense therapy three times a week and  
9 treatment for her to start to recoup from this abuse. Again,  
10 with the therapy she is receiving she is starting to heal from  
11 those scars and wounds caused by David, a so-called friend.  
12 But the memory will haunt her forever. What this has done to  
13 me as a mom watching, watching all these horrible things unwind  
14 is horrifying. Knowing that the things that David did to my  
15 daughter makes me sick to my stomach. As a mom, I have had to  
16 watch my daughter cry herself to sleep at night, flip out and  
17 scream if she just drops a glass of milk worrying that somebody  
18 was going to blame her because she did something wrong. He  
19 took herself esteem away from her. If someone walks up behind  
20 her, she would jump through the roof and get extremely scared.  
21 She was constantly looking over her shoulder to see if he was  
22 behind her due to she was afraid of him getting her again. The  
23 time and effort in taking her to all these appointments and the  
24 energy just trying to hold her while she was in tears, wow,  
25 what a toll it's taken. Staying up all night holding my

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2 daughter because she was afraid to go to sleep. Watching her  
3 cry when she finally gets to sleep because she was dreaming.  
4 The emotional roller coaster as a mom having to watch her child  
5 heal from abuse from a man who was a friend. I myself have had  
6 to go to therapy to get help for myself to learn how to trust  
7 again and to learn not to blame myself for what David did to my  
8 child. I have also had to go through classes to be able to  
9 help my daughter heal from this abuse. I have missed a lot of  
10 time of work going to and from therapy appointments for my  
11 daughter and myself and not to mention the financial toll it's  
12 taken by missing work for all these appointments and paying for  
13 therapy and counseling for two.

14 With the acknowledged -- with the knowledge I have  
15 now, I truly believe David is a very dangerous man. He knows  
16 how to manipulate, lie, cheat and abuse not only the people who  
17 trust him but the system. David has the ability to get people  
18 he talks to to think he is a good man. This is a mask he has  
19 mastered. Well, from everything that me and my child have had  
20 to endure over the past three years is unspeakable. The  
21 actions and sexual abuse he did against a small child is  
22 horrific. I believe now from the bottom of my heart that David  
23 doesn't have remorse for what he has done to my daughter. He  
24 will do this again if he gets out. David is a man who can't be  
25 trusted. He is a man that needs to be held accountable for all

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2 of the horrible things he has done to a 13-year-old child. I  
3 also believe that he is a threat to my daughter's safety. I  
4 believe he will try to locate her, harm her because she broke  
5 her silence after his eight months of abusing her.

6 And in closing, what I would like to ask is for  
7 David to serve life in prison without the chance of parole so  
8 he cannot harm my daughter or someone else's again. But I  
9 believe the charges you have in front of you do not hold that  
10 kind of sentence but I would plead the Court to hold David  
11 accountable to the fullest for his actions of abuse,  
12 manipulation and vile behavior to a child to the max sentence  
13 possible. Whatever the max sentence may be that is allowed for  
14 the charge you have in front of you, I would ask you sentence  
15 David to the max. Thank you.

16 THE COURT: Thank you very much. Mr. Okay, is  
17 there anything you would like to say on behalf of Mr. Rinere  
18 before the Court passes sentence?

19 MR. OKAY: Yes, your Honor. We have just heard a  
20 very powerful statement. And, your Honor, if the Court is  
21 inclined to impose a Guideline sentence, we'd ask the Court to  
22 impose a sentence at the low end of the Guideline range.  
23 However, we are also asking the Court, consistent with what's  
24 in the plea agreement, to consider a sentence at the mandatory  
25 minimum for the offense of conviction. And our position is

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2 that in light of the Second Circuit authority, such a sentence  
3 would not be procedurally or substantively unreasonable. Thank  
4 you.

5 THE COURT: Thank you. Mr. Okay, the Court  
6 appreciates your efforts on behalf of Mr. Rinere and I'm sure  
7 he does as well. Mr. Rinere, is there anything you would like  
8 to say to the Court before I pass sentence?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Please go ahead.

11 THE DEFENDANT: You know, she just stood there and  
12 said that I'll never feel any guilt for what I did. I was 263  
13 pounds when I came into custody. I don't sleep and I don't  
14 eat. There isn't a day that doesn't go by that I don't have  
15 her on my mind and what I did, how I destroyed her, her mother,  
16 her grandmother. They were all my family. That was the only  
17 family that I had left. If I had any idea of what I was doing,  
18 I wouldn't have been doing it. I didn't wait until I was 41  
19 years old to become a pedophile and a child pornographer. The  
20 amount of alcohol and drugs that I was consuming, I was in a  
21 total blackout 90 percent of the time. And I am not by anyway  
22 saying that that was the cause. I accept responsibility for  
23 what I did. It was my actions for drinking that are what were  
24 the cause, but, I don't know, maybe it was because I've been  
25 fighting since I was 11 years old drug addiction and alcohol,

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2 I've spent all my time trying to fix what was wrong with me. I  
3 didn't want to get into any of this. If you look over my  
4 criminal history, my criminal history shows I'm a drunk. I've  
5 never hurt anybody. I've never had any victims. I don't  
6 believe in violence. I've never been part of a gang. I never  
7 worked for the mob. I never sold drugs. I never had guns.  
8 I've never done any of it because I always tried to stay within  
9 the bounds of the law. If I could turn back the hands of time,  
10 I would give my life to give back what I took from her. I  
11 never wanted to hurt her. I never wanted to hurt anybody. I  
12 spend -- maybe it was because I was so depressed and so grieved  
13 after watching my mother die for six years and then being given  
14 two minutes to decide whether they continue working on her or  
15 let her go. Maybe it was the insane amount of drugs and  
16 alcohol I was using that made everything seem like it was okay  
17 there was nothing wrong with it. Maybe it was complete  
18 insanity that caused me to do something this horrific and  
19 stupid, but to ever do this again to somebody else never. I've  
20 never done this before, never been accused because I hate  
21 people like me like this, people that do things like this. I  
22 never wanted to be before another court and never want to be in  
23 another jail, never want to have any of this happen. I never  
24 want to hurt. I want to find my own piece of the world. When  
25 Carrie's sister used to visit me in jail, Rachel, her and her

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2 friend Grace, they all told me they knew it wasn't just me, it  
3 was the situation that I was put in, nobody watched what I was  
4 doing, nobody watched the amount of drugs and alcohol I was  
5 using. Nobody cared what went on around them. They want me to  
6 continue on because Rachel wants me to be there to see  
7 Jaelynne. She brought her to the jail for me to hold her one  
8 time before she left for CA. I'm the one that bought Jaelynne  
9 the first crib. Does that sound if I'm that kind of monster  
10 that is going to go out and continually destroy people, do you  
11 think that is what Rachel would want her little girl living in?  
12 I'm not that kind of person. I need help. What I want to do  
13 is go to the prison and utilize any resource that is available  
14 to me to get the help so I can be a better person when I come  
15 out than I was when I went in. I don't ever want to be in this  
16 situation. I never want to hurt anybody again. I can't live  
17 with what I've done to myself now. I've been told by two  
18 doctors in both jails that if I don't start putting the  
19 vitamins and minerals back in my body, I'll end up shutting  
20 down. And you know what? That's okay with me. Thank you.

21 THE COURT: The Court is now then prepared to pass  
22 sentence on you, Mr. Rinere. And, in that regard, I have  
23 received the presentence investigation report and other  
24 submissions to which I've referred. Additionally, I've  
25 listened to what Ms. Miller said and wrote, what Mr. Okay said

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2 and wrote, what you said and certainly to what Ms. Richardson  
3 said, and wrote. Before proceeding, I just think it's  
4 appropriate to read the letter from the victim in this case who  
5 wrote to me as follows: Your Honor, this man has severely  
6 affected my life. All the way from being 13 years old,  
7 innocent and getting As in school to having many tremendous  
8 breakdowns, counselors and health issues. Not only have I had  
9 problems gaining stability mentally, but also problems  
10 physically. Physical problems such as stress, induced issues  
11 and mental problems is in myself having to take medications to  
12 get myself to this point. I have become a strong willed young  
13 woman now. It has taken me a very long time in order to find  
14 who I am again and realize justice will be served thanks to  
15 you. Last, but not least, writing this letter has shown not  
16 only my family but myself as well that I have the strength to  
17 face and move on from this. I currently am in the process of  
18 raising my grades, having a summer job, and having a very  
19 supportive boyfriend that has stood behind me. I have faith in  
20 you to serve this man a sentence that you would give if this  
21 was your child or loved one. Thank you.

22 I also received a letter from the victim's  
23 grandmother that reads: Your Honor, my name is Mary Jane  
24 Bigato. I am the victim's grandmother. It saddens me to feel  
25 that I need to write this letter to you regarding David Rinere.

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2 I've known David his whole life. I was friends with his mother  
3 for over 55 years. I watched David growing up here in  
4 Rochester and knew of the trouble that David got into in grade  
5 school, his use of drugs and alcohol at a young age. I knew  
6 when he started to have sexual relationships with his  
7 babysitter. I know what happened to the first young girl that  
8 David got pregnant and during her pregnancy David wasn't  
9 allowed to be around her or their child because of abuse.  
10 David has had no contact with his first son. David, his mother  
11 and the first wife lived here in Rochester for several years.  
12 I've seen the many apartments they have lived in that were  
13 damaged by David's hands. I saw many bruises on his wife, but  
14 they passed it off as her being clumsy. What did I know back  
15 then. They all moved to Pennsylvania about 20 years ago. The  
16 pattern started out pretty good, David had a job and seemed to  
17 be doing fine. David and his first wife have three children,  
18 two boys and a girl. The boys' ages range from 14 to 20 and  
19 girl to 17. His first wife has orders of protection against  
20 David to completely stay away from her and her three children.  
21 The last one came because of a car accident because David was  
22 driving with no license and nearly killed his older son.  
23 During his first marriage while David was working, David was  
24 having an affair with a young 16-year-old girl who later became  
25 his second wife, David was 34 at the time. In visits to PA,



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2 which there were six different places they at, I saw the same  
3 damages in each of those apartments. Everything went back to  
4 the ugly man. David's second marriage, he has two daughters, 4  
5 and 7. That marriage only lasted a few years. My friend and  
6 David were now living in a different place, everything seemed  
7 okay. David was clean of any alcohol, he was getting help. I  
8 still couldn't understand why David's own family wanted nothing  
9 to do with him and his mother. As a favor to David's mother  
10 only two short months before she passed away, she asked me if I  
11 could please take care of David and I said yes. A month after  
12 my friend's death we brought David back to Rochester. He was  
13 still getting the help he needed. And then all hell broke out.  
14 I couldn't believe that David could have created such chaos and  
15 destruction in my family, especially to my granddaughter, the  
16 victim. David not only destroyed her innocence but her trust.  
17 Three years of counseling and therapy, the victim is starting  
18 to come. And she has her ups and downs from grades in the 90s  
19 to she is struggling to pass. David's lies about the victim's  
20 own father is a work in progress. The victim still has a hard  
21 time trusting. David is a menace to society. David preys on  
22 young innocent girls. He is a predator and needs to stay in  
23 prison for as long as possible so he cannot hurt another young  
24 girl. Now, at the outset, let me make one thing clear. With  
25 respect to the letters that I've received from the victim's

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2 mother, the victim herself and the victim's grandmother and  
3 with respect to the statements Ms. Richardson made in court,  
4 the Court is not considering them on the sentence I should  
5 give. That is my responsibility and I recognize that. Rather  
6 I'm considering it, Mr. Rinere, as an indication of the  
7 seriousness of the crime, a legitimate factor for a court to  
8 consider in sentencing.

9 In any event, as I've indicated, the Court has  
10 considered all of the submissions that I referred to, including  
11 the presentence investigation report, and the comments made  
12 here in court and the Court is accordingly prepared to pass  
13 sentence. Mr. Rinere, you stand before me, you are now 44  
14 years old, born on March 18th of 1967. And you're here for  
15 sentence after pleading guilty to Count 2 of the subject  
16 indictment, receipt of child pornography, a class C felony in  
17 violation of Title 18 of the U.S.C. Section 2252A(a)(2). It's  
18 punishable, as we discussed when you pled guilty, by a minimum  
19 of five years in prison and a maximum of 20 years and a fine of  
20 up to a quarter of a million dollars or both. On February 16th  
21 of 2011, you appeared before me. You pled guilty to this  
22 charge. Your plea was by way of a written plea agreement  
23 pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal  
24 Procedure. In other words, you understood, Mr. Rinere, at the  
25 time you pled guilty, that your plea was non-revokable, and it

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2 was entered with the full understanding that any calculations  
3 or recommendations contained in the plea agreement would not be  
4 binding upon me and that I could impose upon you the maximum  
5 sentence allowable under law, including a minimum of five  
6 years, a maximum of 20 years, a quarter of a million dollar  
7 fine or both. As a condition of the plea, the government  
8 agreed not to oppose a recommendation that in calculating the  
9 advisory Sentencing Guidelines about which you and I spoke that  
10 the Court reduce your offense level by a total of two points  
11 for what's called acceptance of responsibility. I explained to  
12 you that you didn't get that automatically, that you had to  
13 convince me you were remorseful for what you did. Now, that  
14 you have, frankly -- there certainly was an issue in many my  
15 mind based on what you said in the plea colloquy as pointed out  
16 by Ms. Miller based on the outstanding indictments for which  
17 there was a probable cause finding in Federal Court whether  
18 that you were sincere in your acceptance, however, having  
19 withdrawn that amended sentencing statement, I do feel that  
20 you, and based on what you said to me, I will give you the  
21 benefit of the doubt and find that you have accepted  
22 responsibility and give you the benefit of that reduction in  
23 calculating your advisory sentencing Guidelines. And,  
24 nonetheless, in your plea of guilty you did admit to me that on  
25 or about October 24th, 2008 and April 24th, 2009 between those

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2 dates that you were involved in a relationship with KM a minor  
3 who at the time was under the age of 15 who lived here in the  
4 western district. You acknowledged to me that you did have a  
5 relationship with her during the course of which you employed  
6 and used, enticed and persuaded her to produce a sexually  
7 explicit video and photographs of yourself using a cellular  
8 telephone. And you knew full well at the time you did this she  
9 was 13. You admitted to me that at your request she  
10 transmitted the sexually explicit photographs and video to your  
11 cellular phone and you told me that on or about October 24th of  
12 2008 that you received those photographs on your phone. Again,  
13 at the time you received them that you knew she was thirteen  
14 years old. You acknowledged that the images were shipped and  
15 transported using a Samsung cellular phone and you didn't  
16 dispute based on the government's proffer Sampson does not  
17 manufacture the cellular phone, that they had to travel outside  
18 of the United States, that the images and transmission did  
19 involve a means or facility of Interstate or foreign commerce.

20 This is not your first involvement with the  
21 criminal justice system. As reflected in the presentence  
22 investigation report, you do have prior involvements. And in  
23 1987, you were convicted of operating a motor vehicle while  
24 intoxicated. In 1999, you were convicted of driving while  
25 under the influence of alcohol. That was in Pennsylvania.

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2 1996 you were convicted of criminal trespass in the second  
3 degree, again in Pennsylvania. For that you received five  
4 months jail and two years probation. You have a disorderly  
5 conduct plea out of Irondequoit town court. And it looks like  
6 you have a plea to simple assault in 2005 in Pennsylvania.

7 As we discussed when you pled guilty, Mr. Rinere,  
8 sentencing in this action is pursuant to the Sentencing Reform  
9 Act of 1984. Mr. Okay has indicated that he has received a  
10 copy of the presentence investigation report. Is that correct,  
11 Mr. Okay?

12 MR. OKAY: Yes.

13 THE COURT: Did you review it with Mr. Rinere?

14 MR. OKAY: Yes.

15 THE COURT: Mr. Rinere, have you read the report  
16 yourself?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: The Court has ruled on objections made  
19 with respect to the enhancement and directed certain additions  
20 to the presentence report based on your sentencing statement.  
21 The Court does otherwise adopt the statements contained in the  
22 presentence investigation report as its findings of fact. In  
23 deciding on a reasonable and appropriate sentence, the Court is  
24 aware of, Mr. Rinere, of its responsibility to impose a  
25 sentence sufficient but not greater than necessary to comply

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2 with the purposes of sentencing as set forth in 18 U.S.C.  
3 Section 3553. As required by that section, I've considered all  
4 of the following. I've considered the nature and circumstance  
5 of your crime and your history and characteristics. I've  
6 considered the need for the sentence imposed to reflect the  
7 seriousness of what you did. And, again, the Court considers  
8 the victim impact letters on that point, the seriousness of the  
9 crime and no other. I've considered the need for the sentence  
10 imposed to promote respect for the law, and provide you with a  
11 just punishment, to send a message of deterrence, to tell the  
12 community this kind of conduct simply cannot be tolerated.  
13 I've considered the importance of protecting the public from  
14 further crimes that you -- any further crimes committed on your  
15 behalf to make sure that that doesn't occur. I've considered  
16 the need to provide you with whatever care, training or  
17 treatment you need in the most effective manner. I've  
18 considered as well the importance of avoiding unwarranted  
19 sentencing disparities, that is, differences among defendants  
20 with similar records who have been found guilty of similar  
21 conduct. And I've considered the those allowed under the  
22 statute, a potential of 20 years, and those recommended under  
23 the Guidelines. With respect to the advisory sentencing  
24 Guidelines in accordance with the Second Circuit's direction in  
25 the *Crosby* and *Gonzalez* cases, I've made the following findings

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2 which have allowed me to properly consider the advisory  
3 Sentencing Guidelines along with all other sentencing factors.  
4 I've considered that your base offense level is 32. I've  
5 determined there should be some enhancements. First, a  
6 two-level increase pursuant to the Guideline Section  
7 2G2.1(b) (1) (B) since the offense involved a minor who is more  
8 than 12 years old but under 16. Another two-level increase  
9 pursuant to Guideline Section 2G2.1(b) (2) (A) since the offense  
10 involved the commission of a sexual act, we detailed those  
11 acts. I've also ruled against your objection and found that  
12 the government could establish as a matter of law and certainly  
13 by a preponderance of evidence that there should be a two-level  
14 increase for distribution. If you take those increases to the  
15 base offense level that is a total of six levels in increases  
16 and takes your adjusted offense level is 38. However, the  
17 Court will give you the benefit of that two-level reduction  
18 discussed in the plea agreement for acceptance, which takes you  
19 down to a 36. Your criminal history category is 1. That is  
20 what you understood in the plea agreement and that is what the  
21 plea agreement recommends. With a criminal history category of  
22 1 and an offense level of 36, the recommended range under the  
23 advisory sentencing Guidelines is 188 to 235 months in prison.  
24 The recommended period of supervised release is recommended  
25 under the advisory Guidelines pursuant to policy statement

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2 5D1.2(a)(2) is life. You're not eligible for probation. The  
3 fine range is 2000 -- excuse me -- 20,000 to 200,000. And  
4 restitution, in this case, Ms. Miller, is not an issue; is that  
5 correct?

6 MS. MILLER: That is correct.

7 THE COURT: So those would be my options under the  
8 advisory Guidelines. However, in the plea agreement, Mr. Okay  
9 reserved on your behalf an important right and that is the  
10 right to argue to me for a sentence outside or less than the  
11 Guidelines. Specifically in paragraph 16, Mr. Okay reserved  
12 the right to, quote, "recommend a sentence outside of the  
13 sentencing Guideline range." And he has done that in his  
14 sentencing memorandum. When such an application is made the  
15 Court first is obligated to consider whether any departure  
16 authority exists within a Guideline analysis. In regard to his  
17 basis for seeking a downward departure or a sentence outside of  
18 the Guideline range, Mr. Okay directs the Court to the *Dorvee*  
19 case. *Dorvee* didn't dispute really the application of certain  
20 enhancements, but, as Mr. Okay points out, suggested that the  
21 Guidelines -- the Guidelines, in certain respects, have no  
22 empirical basis, and could thus lead to unreasonable sentences.  
23 However, as to a Guideline analysis, the Court finds that there  
24 is no factor identified individually or in combination which  
25 would justify the Court departing from the Guideline range.



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2 However, that doesn't end the analysis. The Court must next  
3 consider whether there is any basis for giving you a  
4 non-Guideline sentence. And here, of course, as Mr. Okay  
5 suggests in his submission, the Court has considerably more  
6 discretion. And here he relies on the *Dorvee* case. And  
7 certainly *Dorvee* did question the application of certain  
8 enhancements that are typical with child pornography cases such  
9 as the use of a computer. However, there is no such  
10 enhancement here. The number of images, however there is no  
11 such enhancement here. The fact that many child pornography  
12 cases involve enhancements for sadistic images or images of  
13 violence, again, there are none here. So the Court is really  
14 not seeing the facts and circumstances of this case, the  
15 applicability of *Dorvee*. Additionally, the Court might add,  
16 the Court made a point in *Dorvee* to indicate that defendant --  
17 that is *Dorvee* -- never acted out, never engaged in sexual  
18 activity involving children, which is certainly not the case  
19 here. Additionally the Court notes *United States vs. Aumais* at  
20 656 F. 3d 147, 156 to 157 where the Circuit noted, quote, "as  
21 substantive reasonableness *Aumais* principally relies on our  
22 recent decision in *Dorvee* to support the argument that the  
23 sentence was greater than necessary to serve the purpose of  
24 sentencing. This argument too is without merit. *Dorvee*  
25 observed that USSG Section 2G2.2, the Guideline at issue here,

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2 can, unless applied with great care, leave with sentences that  
3 are inconsistent with what 3553 requires because the  
4 enhancements in that Guideline routinely result in Guideline  
5 projections near or exceeding statutory maximum even in the  
6 run-of-the-mill cases. The various child pornography  
7 enhancements applied in *Dorvee* resulted in a Guideline sentence  
8 at the lower end -- at the low end was 22 months longer than  
9 the statutory maximum. So the Court is aware of *Dorvee* and the  
10 Court is aware of *Aumais* and the Court has applied the  
11 Guidelines here with great care. In doing so, the Court  
12 determines that a non-Guideline sentence is not warranted. The  
13 Court has considered the factors of the *Dorvee* case. This is  
14 clearly a serious crime. And it's certainly made more serious  
15 by the facts and circumstances that are undisputed in this  
16 case. So, the Court on careful consideration determines that  
17 there is nothing identified here which would lead the Court to  
18 a non-Guideline sentence. To the extent that really raised for  
19 the first time in this proceeding is this idea that Mr. Rinere  
20 was under the influence of drugs or alcohol or under some  
21 psychological issues relating to the death of his mother or  
22 history of some issues of mental health treatment those really  
23 were not identified up to his comments here in court. And, in  
24 any event, with respect to a Guideline analysis, those are all  
25 disfavored factors, and the Court certainly finds there is no

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2 evidence they were present to such a degree that would take  
3 this case out of the heartland of cases for a Guideline  
4 sentence. Moreover, in terms of a non-Guideline sentence, the  
5 Court figures -- the Court determines they don't justify  
6 something outside of the Guidelines. Frankly, Mr. Rinere, your  
7 suggestion that if you had any idea of what you were doing --  
8 that you didn't have any idea of what you were doing, you would  
9 never hurt the victim intentionally, suggestion that you must  
10 have been insane, that it was alcohol, that nobody helped you,  
11 that it was because your mother had died, sound to me like the  
12 devil-made-me-do-it argument. And I don't accept them. You're  
13 an adult man, obviously intelligent, you knew exactly what you  
14 were doing. And I'll put it to you directly. You are a sexual  
15 predator. It's made more egregious by the fact that this child  
16 was a family friend. That you abused this position of trust.  
17 It certainly sounds undisputed that the victim's family,  
18 including her grandmother, reached out to try and help you out  
19 of a sense of loyalty that the grandmother had for your mother  
20 and you used that position to engage in the most unthinkable  
21 conduct. In a civilized society, Mr. Rinere, we have a  
22 responsibility to protect our children, not to violate them.  
23 And that is exactly what you did. You engaged in conduct that  
24 will forever affect this child. And to say that for you, a  
25 family friend, to do so is despicable is an understatement.

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2 Now, I've considered the Guidelines carefully.  
3 I've considered all of the facts and circumstances of this case  
4 and the Court determines that in your case a sentence of 228  
5 months, 19 years, is the sentence sufficient but not greater  
6 than necessary to comply with all the sentencing objectives as  
7 set forth in 18 U.S.C. Section 3553. I've considered the facts  
8 and circumstances as they apply to this case, and have  
9 determined, as indicated, that such sentence is sufficient but  
10 not greater than necessary to comply with those sentencing  
11 requirements.

12 The Court then, Mr. Rinere, has carefully  
13 considered all of the facts and circumstances surrounding your  
14 case as well as the objectives of sentencing as set forth in 18  
15 U.S.C. Section 3553. Pursuant to that section of law and  
16 pursuant to the Sentencing Reform Act of 1984 it is the  
17 judgment of the Court that you, David R. Rinere, are hereby  
18 committed to the custody of the Bureau of Prisons to be  
19 imprisoned for a term of 228 months, that is 19 years. Now,  
20 the Court fully recognizes that this is close to the statutory  
21 maximum. It is certainly within the Guideline range, but close  
22 to the statutory maximum. The Court believes that that is  
23 appropriate in this case. And in doing so, the Court has  
24 followed the direction of *Aumais* and the Court has carefully  
25 applied the Guidelines in this case and has considered those

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2 objectives of sentencing. Why 228 months? To the extent it's  
3 necessary, since the range the Court has found -- and I want to  
4 clarify that range. The Court does find for purposes of the  
5 record, in case I did not indicate it, that with a criminal  
6 history category of -- I did indicate, I'm sorry. That the  
7 sentencing range indicated in the plea agreement is  
8 appropriate. And, however, the Court, when the sentencing  
9 range exceeds 24 months, which it does in this case, is  
10 required to state its reason for imposing a sentence at a  
11 particular point. Frankly, I think that a sentence near the  
12 statutory maximum is necessary not only to send a strong  
13 message to the community that you cannot engage in this  
14 horrific conduct, that, again, we should be protecting our  
15 children not abusing them, but, frankly, to send, I think it's  
16 an appropriate sentence for you to make sure you never do this  
17 kind of thing again. The cost of incarceration fee is waived.  
18 But, again, you are committed to the custody of the Bureau of  
19 Prisons to be imprisoned for a term of 228 months. It is  
20 ordered that you pay to the United States a fine of \$500.  
21 Interest on the fine is waived. While incarcerated, if you are  
22 non-UNICOR or UNICOR grade 5, you are to pay installments of 25  
23 per quarter. If assigned grades one through four, you're to  
24 pay installments of 50 percent of your monthly pay. While on  
25 supervised release, you shall make monthly payments at the rate

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2 of 10 percent of your monthly gross income. Payments are to be to  
3 made in the form of a money order made payable to Clerk, 304  
4 U.S. District Court, 68 Court Street, Buffalo, New York, 14202.  
5 It's further ordered that you pay to a United States a special  
6 assessment of \$100, which is due immediately. Upon your  
7 release from imprisonment, you shall be placed on supervised  
8 release for a term of 30 years. Now, why 30 years? Well, I  
9 will explain. And the Court fully understands I could give you  
10 up to life under the plea agreement. However, if memory serves  
11 me correctly, you were arrested in 2009, so you have  
12 approximately two years in for which you'll get credit. If you  
13 behave inside on a 19-year sentence, you'll do approximately 16  
14 years. If you take away the two years you've done, that is 14  
15 years. You'll be 58 approximately when you get out. I think  
16 30 years is sufficient to put you in your mid to late 80s to  
17 guarantee the safety of children. The Court determines any  
18 less measure would put children at risk. But in imposing the  
19 sentence, the Court considers it's reasonable after considering  
20 all of the 18 U.S.C. Section 3553 factors. While on supervised  
21 release, you shall not commit another federal, state or local  
22 crime. You are prohibited from possessing a firearm,  
23 ammunition or other dangerous device. In addition, you shall  
24 not possess a controlled substance and shall comply with the  
25 standard conditions that have been adopted by this Court.

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2 Since the instant offense occurred after September 13th, 1994  
3 drug testing is required by the Crime Control Act.  
4 Additionally, you shall cooperate in the collection of a DNA  
5 sample as required by the Justice for All Act of 2004. In  
6 addition, you shall comply with the following special  
7 conditions. You must provide the United States Probation  
8 Office with advance notification of any computer, automated  
9 service or connected devices that will be used during the term  
10 of supervision. Probation office is authorized to install any  
11 application as necessary to surveil all activity on any such  
12 computers, connected devices which you own or operate. You are  
13 -- you may be required to pay the cost of monitoring services  
14 at a monthly rate determined by the probation office. The rate  
15 and payment schedule are subject to periodic adjustments by the  
16 probation office and the probation office shall be informed via  
17 electronic notification of any -- excuse me -- shall be  
18 notified via electronic transmission of any impermissible or  
19 suspicious activity or communications occurring on such  
20 computer or connected devices consistent with the computer  
21 monitoring policy in effect by the probation office. As  
22 triggered by impermissible or suspicious activity, you shall  
23 consent to and cooperate with the unannounced examinations of  
24 any computer equipment with which you own or use. The  
25 examination shall include, but is not limited to, retrieval and

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2 copying of all data from any such computers, connected devices,  
3 storage media and internal or external peripherals and may  
4 include the removal for the purpose of conducting more thorough  
5 inspection. You are to enroll, attend and participate in  
6 mental health intervention specifically designed for the  
7 treatment of sexual offenders as approved by the probation  
8 office. You're to comply with the mandates of treatment,  
9 treatment program and are not to leave treatment until  
10 discharge is agreed to by the probation office and the treating  
11 agency. You shall not have deliberate contact with any child  
12 under 18 years of age unless approved by the probation office.  
13 You shall not loiter within 100 feet of school yards,  
14 playgrounds, arcades or other places primarily used by children  
15 under the age of 18. You shall -- you are prohibited from  
16 possessing or downloading any child pornography as defined in  
17 18 U.S.C. Section 2256 to include as follows: Any visual  
18 depiction, including any photograph, film, video, picture or  
19 computer or computer-generated picture or image whether made or  
20 produced by electronic, mechanical or other means of sexually  
21 explicit conduct. You shall register with the state sex  
22 offender registration agency in any state where you reside, are  
23 employed, carry on a vocation or are a student and provide  
24 proof of registration to the probation office. You are to  
25 submit to a search of your person, house, residence, vehicle,



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2 papers, and other electronic communications or data storage  
3 devices or media and effects and consent to a search at any  
4 time with or without a warrant by any law enforcement or  
5 probation officer with reasonable suspicion concerning a  
6 violation of a condition of supervised release or unlawful  
7 conduct on your part by any probation officer in the lawful  
8 discharge of that Officer's supervisory functions. In order to  
9 monitor your compliance with not buying or subscribing to  
10 networks that provide child pornography. You are to provide  
11 the probation office with access -- excuse me -- to any  
12 requested personal and/or business financial information. You  
13 shall submit to substance abuse testing to include urinalysis  
14 and other testing. The details of such testing to be approved  
15 by the probation office. If substance abuse is indicated by  
16 the testing, you are to complete a drug/alcohol evaluation and  
17 enter into any treatment as deemed necessary by the probation  
18 office and/or the Court. Finally, if treatment is necessary,  
19 you're not to leave treatment until discharge is agreed to by  
20 the probation office and/or the Court. And while in treatment  
21 or after discharge from treatment, you're to abstain from the  
22 use of alcohol. Finally, you're required to contribute to the  
23 cost of any services rendered in an amount determined by the  
24 probation office based on the -- based on your ability to pay  
25 and availability of any third-party payment. Finally, as a

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2 condition of supervised release, you are to stay away from the  
3 victim, not have any communication, whether by phone, in  
4 person, e-mail, regular mail or in any form whatsoever with  
5 her. That is the sentence of the Court. Now, since this  
6 sentence is in accordance with the terms and conditions of the  
7 plea agreement, pursuant to the plea agreement -- excuse me.  
8 You do have your right to appeal the sentence imposed. Bear  
9 with me one moment. Since this sentence exceeds the 188 months  
10 for which had you agreed to waive your right to appeal or  
11 otherwise collaterally attack, I am informing you, Mr. Rinere,  
12 that pursuant to Federal Rule of Criminal Procedure 32(c)(5)  
13 that you have the right to appeal the sentence imposed. If you  
14 are unable to pay the cost of an appeal, you may apply for  
15 leave to appeal in forma pauperis. However, it's the practice  
16 in this district, Mr. Okay will represent you on any appeal  
17 should you wish to file. That is the sentence of the Court.  
18 Ms. Miller, is there any charges outstanding?

19 MS. MILLER: The government moves to dismiss the  
20 remaining counts in the indictment.

21 MR. OKAY: Your Honor, would the Court be inclined  
22 to make a recommendation for the Bureau of Prisons drug  
23 treatment program and house Mr. Rinere as close to the Western  
24 District of New York geographically as possible.

25 THE COURT: Does he have relatives here?

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2 THE DEFENDANT: I have a fiance that is here.

3 THE COURT: All right, I will. Mr. Okay, pursuant  
4 to your request, I recommend that Mr. Rinere be housed in any  
5 suitable Bureau of Prisons facility as close to this area as  
6 possible so he can stay in contact with his fiance. I will  
7 also recommend to the Bureau of Prisons that Mr. Rinere be  
8 allowed to participate in any suitable Bureau of Prisons  
9 substance abuse therapy program that he qualifies for and that  
10 he is willing to participate in. With respect to my first  
11 recommendation about being housed in a suitable Bureau of  
12 Prisons facility as close to this area as possible, it may be,  
13 as you know, Mr. Okay, that that is going to be in Butner,  
14 North Carolina or some other facility where they have -- where  
15 they specifically have the services designed to offer treatment  
16 for sex offenders. Thank you very much.

17 MS. MILLER: Your Honor, with respect to the  
18 Government's respect to dismiss the outstanding counts of the  
19 indictment.

20 THE COURT: Yes, the Court will grant that.

21 MS. MILLER: Thank you, your Honor.

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript of the  
record of proceedings in the above-entitled matter.

S/ Karen J. Bush

Official Court Reporter